



Portsmouth, Virginia Police Department Department Organization

Suspect Lineup Procedures			OPR	53
Effective:	05.02.14		8	pages
Supersedes:	08.31.12	CALEA: 42.2.11, 42.2.12		

APPROVED: Edward G. Hargis, Chief of Police

PURPOSE: To establish a policy for conducting photographic lineups and show-ups, and to establish procedures to prevent errors in identification and/or undue suggestiveness to witnesses. (42.2.11)

POLICY: The Portsmouth Police Department makes every effort to maximize the reliability of identifications, minimize unjust accusations of innocent persons, and establish evidence that is reliable and conforms to established legal procedure.

GUIDELINES: The Department attaches the highest priority to the protection of the citizens that we serve. Recognizing that innocent persons may occasionally become involved in the criminal investigative process and be wrongly implicated in criminal matters, we attach equal importance to clearing innocent persons as to that attached to arresting the guilty.

The following procedures incorporate recommendations issued by the United States Department of Justice in its *Eyewitness Evidence: A Guide for Law Enforcement*.

DEFINITIONS:

Lineup - A lineup is any procedure in which a victim or witness to a crime or other incident is asked to identify a suspect from among a group of persons in order to determine or confirm the identity of the suspect(s). Such procedures involve either actual viewing of persons in show-ups. or viewing of photographs (in a photo lineup). (The Department does not conduct live lineups, therefore they will not be addressed in this policy).

Photo Lineup – An identification procedure in which an officer displays an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense, to an eyewitness either in hard copy form or via computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

Sequential Lineup - A method of administration where an officer shows photographs to the victim/witness one at a time, with an independent decision on each, before the next photo is shown.

Blind Administrator - The person administering the line-up has no knowledge of which person in the photo/live line-up is the suspect.

Blinded Administration - This is a lineup procedure in which the administrator may know the identity of the suspect, but by virtue of the use of procedures and/or technology to accomplish this procedure, does not know which lineup member the witness is viewing.

Confidence Statement - A statement in the victim/witness' own words, articulating their level of confidence in the identification taken at the time the victim/witness makes the identification. (42.2.11, e)

Fillers - Non-suspect photographs or line-up members.

Folder Shuffle Method (An Acceptable Alternative (due to special circumstances) to the use of a Blind Administrator) - The "Folder System" was devised to address concerns surrounding limited personnel resources while allowing for blind administration. Procedures for its use are described in section IV below.

Show-up - An identification procedure in which an officer presents and eyewitness with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

PROCEDURES:

I. General

- A. Department personnel shall strictly adhere to established procedures for conducting suspect lineups in order to avoid the possibility of error or of undue suggestiveness to witnesses.
- B. The Department shall train personnel in lineup procedures to establish uniformity and consistency of such procedures, and to establish a high level of competence in carrying out this important aspect of a criminal investigation.
- C. Department personnel shall report any known errors, flaws or non-conformance with established procedures in the conduct of a suspect lineup that they may observe, or become aware of, to their supervisor in order that corrective actions may be taken and safeguards established to protect the innocent. The supervisor, in turn, must share this information with the Commonwealth Attorney's office as they may deem it exculpatory.
- D. The Department will confer with the Commonwealth Attorney's office in establishing lineup procedures in order to assure the best use of this type of evidence and that procedures established are compatible with the prosecution of criminal cases. The Department will also establish witness instructions during lineup procedures in consultation with the Commonwealth's Attorney Office.
- E. Prior to a photo lineup or a show-up, the investigating officer (IO) should record as complete a description as possible of the perpetrator provided by the witness and in the witness's own words. This statement should also include information regarding conditions under which the witness observed the perpetrator including location, time, distance, obstructions, lighting, weather conditions and other impairments, including, but not limited to alcohol, drugs, stress, the presence of a weapon and any other relevant conditions. The IO should also ask the witness if he or she needs glasses or contact lenses and whether he or she was wearing them at the time of the offense.
- F. Investigators may video and/or audio record photographic lineups. (42.2.11, b)

II. Show-up Procedures

- A. Officers should only perform show-ups using a live suspect and only in exigent circumstances that require the immediate display of a suspect to an eyewitness. Exigent circumstances include:
1) there is an issue of officer or public safety;
2) there is a potential flight risk of the suspect; or
3) a physical or photo line-up is not practical. (42.2.12, a)
- B. The length of time between the occurrence of the crime and the show-up should be reasonable and be conducted within two hours of the offense.
- C. IO's should not conduct a show-up with a single photograph; if IO's want to determine if an eyewitness can make an identification using a photo, they should employ a photo lineup.
- D. An officer should transport the eyewitness to a neutral, non-law enforcement location where the suspect is being detained for the purposes of a show-up. (42.2.12, b)
- E. The officers should provide the eyewitness with the following instructions: (42.2.12, d)
1. The perpetrator may or may not be the person that is presented to the eyewitness;
 2. The eyewitness should not feel compelled to make an identification;
 3. The investigation will continue regardless of whether an identification is made;
 4. The procedure requires the investigator to ask the eyewitness to state, in his or her own words, how certain he or she is of the identification he or she has made; and
 5. The eyewitness should not discuss the identification procedure with other eyewitnesses involved in the case and should not speak to the media.
- F. If there are multiple witnesses, only one witness at a time should participate in the show-up procedure, independent of the others. If a positive identification is made, and an arrest is justified, the show up will end, and the IO should show all additional witnesses photo lineups. (42.2.12, c)
- G. If identification is made, the IO should seek and document a clear statement from the witness, at the time of the identification and in the witness's own words, as to the witness's confidence level that the person identified is the perpetrator. (42.2.12, e)
- H. Law enforcement personnel present and involved in the case shall be knowledgeable about the procedure so that they will not interfere with, or influence any witness during the process. Unnecessary personnel shall be removed from the location where the process is being conducted. Any feedback to the witness(es) is prohibited. (42.2.12, f)
- I. IO's should photograph a suspect at the time and place of the show-up to preserve a record of his or her appearance at the time of the show-up and document all aspects of the show-up. (42.2.12, g)
- J. The administrator shall then document and record the results of the procedure. This should include: the date, time and location of the lineup procedure; the name of the administrator; the names of all of the individuals present during the lineup; the number of photos shown; copies of the photographs themselves; the order in which the folders were presented; the sources of all of the photos used; a statement of confidence *in the witness's own words* as to the certainty of his or her identification, taken immediately upon reaction to viewing; and any additional information

the administrator deems pertinent to the procedure.

(42.2.11.g, 42.2.12.g)

III. Photo Lineups

- A. The IO shall select an individual to serve as the blind administrator. The blind administrator must not know which member of the lineup is the “true” suspect in order to avoid inadvertent signs or body language that may lead a witness to make an incorrect identification. The blind administrator should be thoroughly familiar with this procedure. (Alternatively a ‘blinded’ administrator may be used, namely an individual who knows the suspect’s identity but is not in a position to see which members of the line-up the witness is viewing. This can be accomplished, for instance, through the use of the folder shuffle method or via laptop technology).

(Blind administration is preferable to the folder shuffle method, but it is also an acceptable alternative when blind administration is not feasible, e.g., there was no officer available to act as an administrator. It is important to document why blind administration was not feasible).

- B. Assure that law enforcement and/or prosecutorial personnel present and involved in the case are knowledgeable about the procedure so that they will not interfere or influence any witness during the process. Unnecessary personnel shall be removed from the location where the process is being conducted. Any feedback to the witness(es) is prohibited. (42.2.11, f)
- C. The IO should compose a photo lineup so the fillers generally resemble the eyewitness’s description of the perpetrator, while ensuring that the lineup is comprised in such a manner that the suspect does not unduly stand out from the fillers. However, complete uniformity of features is not required. Avoid reusing filler photos. If the witness has previously viewed a photo lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup shall be different from the fillers used in prior lineups. (42.2.11, a)
- D. When there are multiple suspects, each identification procedure shall include only one suspect.
- E. Avoid mixing color and black and white photos. Photos shall be either all black and white or all color.
- F. Cover any portions of mugshots or other photographs that provide identifying information. Ensure that no writings or information concerning previous arrest(s) are visible to the witness. If it is necessary to block-out or cover a notation, such as a name on one photo, then the IO shall place similar blocking-out or covering marks on all photos so that they will appear alike.
- G. Use photos of the same size and basic composition, and never mix mugshots with other snapshots or include more than one photo of the same suspect.
- H. Select fillers who generally fit the witnesses’ description of the offender. When there is a limited or inadequate description of the offender provided by the witness, or when the description of the offender differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
- I. Select a photo that resembles the suspect’s description or appearance at the time of the incident, if multiple photos of the suspect are reasonably available to the investigator.

- J. Ensure that the photos are reasonably contemporary.
- K. Include a minimum of five fillers per photo identification procedure. (42.2.11, a)
- L. Create a consistent appearance between the suspect and fillers so that the photos depict individuals who are reasonably similar in age, height, weight and general appearance, and are of the same sex and race.
- M. Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature – such as a scar or tattoo - used to describe the perpetrator by concealing or artificially concealing that feature. If the suspect, for instance, has a facial scar or tattoo, black out, conceal or otherwise cover up that area of the suspect's face and then do the same for each of the lineup members to achieve consistency across all lineup members.
- N. If there are multiple witnesses, each witness shall view the lineup independently and separately and you should place the suspect in a different position in the lineup for each witness.(42.2.11, c)
- O. Review the array, once completed, to ensure that the suspect does not unduly stand out.
- P. Assign each photo a lineup identification number. Record the identification number on the back of each photo. Refer to that photo only by that number. The nature of the identification number shall be purposely complex to the witness, so that any inadvertent glance will not significantly hinder the identification process or alert the witness as to the identity of the actual suspect.
- Q. After each photo has been assigned an identification number, record the number along with all other pertinent information on the Lineup Identification Form.
- R. Record the presentation order of each lineup and ensure that a you make and retain a complete written record of the identification proceeding. Your record shall include: all identification and non-identification results obtained during the procedure and signed by the witness, including the witness's confidence statement; the names of all of the persons present at the identification procedure, the date and time of the identification procedure, and the sources of all photos or persons used in the identification procedure. Additionally, you shall preserve the photos themselves in their original condition.
- S. The administrator shall then document and record the results of the procedure as described in paragraph II.J above . (42.2.11, g)

IV. Alternative Method

- A. Folder Shuffle Method - Should the IO of a case be the only law enforcement personnel available to conduct a photo lineup, the following is recommended:
 - 1. Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description but do not cause the suspect photograph to unduly stand out, and ten folders (four of the folders will not contain any photos and will serve as 'dummy folders').
 - 2. Affix one filler photograph to the inside of the first folder and label it #1.

3. Affix the suspect photograph to the inside of the next folder. *It is imperative that this folder is not yet numbered.*
4. Affix four filler photographs (one each) into the next empty folders. *It is imperative that these folders are not numbered yet.* Shuffle the folders (with the exception of folder #1) so that the administrator is unaware of which folder the suspect is in.

Label the shuffled folders #2 through #6.

5. The remaining folders will not contain photos and shall be labeled #7 through #10. These photos will only contain a page with the following text “THIS FOLDER INTENTIONALLY LEFT BLANK.” (This is done so that the witness does not know when he or she has seen the last photo).
6. Place all folders in numerical order (#1 though #10) for presentation of the lineup.
7. The administrator shall provide instructions to the witness. You shall inform the witness that the perpetrator may or may not be contained in the photos he or she is about to see and that the administrator does not know which folder contains the suspect. (42.211, d)
8. Without looking at the photo in the folder, the administrator is to hand each folder to the witness individually. Each time the witness has viewed a folder, the witness should indicate whether or not this is the person the witness saw and the degree of confidence in this identification, and return the photo to the administrator. The order of the photos shall be preserved, in a facedown position, in order to document in Step 10. (You may permit the witness to review the folders a second time, but it is imperative that you provide all folders in the same order as the original presentation).
9. Instruct the witness that the procedure – only if identification is made – requires the investigator to ask the witness to state, in his or her own words, how certain he or she is of the identification at the time he or she makes the identification.
10. The administrator shall then document and record the results as described in paragraph II.J above. (It is important for the administrator to not ask the witness for a numerical rating of their confidence level).

V. Conducting the Identification Procedure

- A. The IO shall conduct the identification procedure in a manner that promotes the accuracy, reliability, fairness and objectivity of the witness’ identification. These steps are designed to ensure the accuracy of identification or non-identification decisions.
- B. When presenting the lineup, the person administering the lineup shall use the approved standard instructions for witnesses prior to the lineup that the offender might or might not be among those in the photo array or live lineup, and therefore, the witness should not feel compelled to make identification.

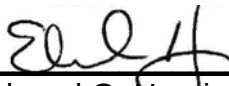
- C. Assure the witness prior to the lineup that regardless of whether identification is made, the police will continue to investigate the incident.
- D. Instruct the witness that if he or she sees the offender in the lineup, he/she might not appear exactly the same as on the date of the incident because features such as clothing, head or facial hair can change. Additionally, photos do not always depict the true complexion of a person, which might be lighter or darker than shown in the photo. Be careful not to imply or lead the witness to believe that the suspect's appearance has actually changed in any way. (42.2.11, d)
- E. Provide the following additional viewing instructions to the witness: (42.2.11, d)
 - 1. You will view individual photos one at a time.
 - 2. Photos are in random order.
 - 3. Take as much time as needed in making a decision about each photo.
 - 4. The IO will show all photos, even if identification is made prior to viewing all photos.
 - 5. The administrator does not know who the perpetrator is.
- F. Confirm that the witness understands the nature of the sequential procedure.
- G. Instruct the witness that the procedure – only if identification is made - requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification at the time that the identification is made.
- H. Present each photo to the witness separately, in a previously determined order, as documented on the lineup worksheet, removing those previously shown.
- I. Take care to avoid the witness turning over the photo and reading the identification number recorded on the back.
- J. Avoid saying anything to the witness that may influence the witness' selection.
- K. If identification is made, avoid reporting or confirming to the witness any information regarding the individual he or she has selected, until the entire process (including obtaining a confidence statement and obtaining required signatures and paperwork) has been completed.
- L. If the witness requests to view the photo sequence again, (or specific photos), they may be shown a second time, but must be shown again in the same sequence in its entirety even if the witness makes an identification during this second showing.
- M. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

VI. Recording Identification Results (42.2.11, g)

- A. When conducting an identification procedure, the person administering the lineup shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness. A complete and accurate record of the outcome of the identification procedure is crucial. This record can be a critical document in the investigation and any subsequent court proceedings.

- B. When documenting the identification procedure, the person administering the lineup shall record both identification and non-identification results, including a statement of confidence, in the eyewitness's own words (*the results shall not be ranked*).
- C. If the witness identifies a person as the perpetrator, the investigator shall not provide the witness any information concerning such person before the administrator obtains the witness's confidence statement about the selection. After the witness' confidence statement is obtained, the administrator shall not tell the witness information about how accurate they were in their identification or provide additional information about the defendant. (42.2.11.e)
- D. Document in writing the photo lineup procedures, including identification information and sources of all photos used, names of all persons present at the lineup, and date and time of the identification procedure.
- E. Ensure that the witness and the person administering the lineup signs and dates the results.
- F. Ensure that no materials indicating previous identification results are visible to the witness.
- G. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

APPROVED: _____


Edward G. Hargis, Chief of Police